

numeral 42 represents the upper plate electrode. Page 15, lines 7-25 of the specification of the instant application provides support for reciting that the upper plate electrode is composed of SiGe polysilicon.

The amendments to Claims 25 and 26 are self-explanatory and were required given the amendments made to independent Claim 24.

Since the above amendments to the claims do not introduce new matter into the instant application, entry thereof is respectfully requested. As required by 37 C.F.R. §1.121, applicants have attached hereto a marked-up version of the changes made to the specification and claims by the present amendment. The attached page is captioned "VERSION WITH MARKINGS TO SHOW CHANGES MADE".

In the present Office Action, Claims 24 and 25 stand rejected under 35 U.S.C. §102(e) as allegedly anticipated by U.S. Patent No. 5,973,954 to Wu, et al. ("Wu, et al."). Claim 27 stands rejected under 35 U.S.C. §102(e) as allegedly anticipated by or, in the alternative, under 35 U.S.C. §103 as allegedly unpatentable over Wu, et al. Claim 28 stands rejected under 35 U.S.C. §103 as allegedly unpatentable over the combination of Wu, et al. and U.S. Patent No. 6,150,701 to Lee ("Lee").

In regard to the anticipation rejections, it is axiomatic that anticipation under §102 requires that the prior art reference disclose every element of the claim to which it is applied. In re King, 801 F.2d 1324, 1326, 231 USPQ 36, 138 (Fed. Cir. 1986). Thus, there must be no differences between the subject matter of the claims and the disclosure of the applied prior art reference. Stated in another way, the reference must contain within its four corners adequate direction to practice the invention as claimed. The corollary of this rule is equally applicable.

The absence from the applied reference of any claimed element negates anticipation. Kolster Speedsteel AB v. Crucible Inc., 793, F.2d 1565, 1571, 230 USPQ 81, 84 (Fed. Cir. 1986).

Applicants respectfully submit that Claims 24, 25 and 27 are not anticipated by the disclosure of Wu, et al. since the applied reference does not disclose applicants' claimed poly-poly capacitor which comprises upper and lower plate electrodes that are separated by an insulator structure, wherein at least the upper plate electrode is composed of SiGe polysilicon. In contrast, the capacitor structure disclosed in Wu, et al. comprises lower polycrystalline SiGe plate electrode 102, capacitor dielectric layer 82, and upper polysilicon cell plate 84. Hence, the capacitor structure of the applied prior art has a material configuration that is opposite that of the claimed invention wherein it is required that at least the upper plate electrode is comprised of SiGe polysilicon.

The foregoing remarks clearly establish that the disclosure of Wu, et al. does not teach every aspect of the rejected claims, as required by King and Kolster Speedsteel; therefore the claims of the present application are not anticipated by the disclosure of Wu, et al. Applicants thus submit that the since the instant §102(e) rejections have been obviated, the rejections to Claims 24, 25 and 27 citing Wu, et al. can and should be withdrawn.

In regard to the §103 rejections citing Wu, et al. alone, or the combination of Wu, et al. and Lee, applicants submit that the applied references do not render the claims obvious since Wu, et al. alone, or Wu, et al. in combination with Lee, do not teach or suggest applicants' claimed poly-poly capacitor structure. Specifically, the principal reference spurring each §103 rejections, i.e., Wu, et al., is deficient for the same reasons as mentioned hereinabove; therefore applicants incorporate those remarks herein by reference. To reiterate: Wu, et al. do not teach or suggest a poly-poly capacitor structure which comprises upper and

lower plate electrodes that are separated by an insulator structure, wherein at least the upper plate electrode is composed of SiGe polysilicon. In contrast, the capacitor structure disclosed in Wu, et al. comprises lower polycrystalline SiGe plate electrode 102, capacitor dielectric layer 82, and upper polysilicon cell plate 84. As stated above, the capacitor structure of the applied prior art has a material configuration that is opposite that of the claimed invention wherein it is required that at least the upper plate electrode is comprised of SiGe polysilicon.

The applied secondary reference, i.e., Lee, does not alleviate the above mentioned defects in Wu, et al. since Lee also does not teach or suggest applicants' claimed poly-poly capacitor structure which comprises upper and lower plate electrodes that are separated by an insulator structure, wherein at least the upper plate electrode is composed of SiGe polysilicon.

Lee discloses a semiconductor device which includes a substrate having a plurality of device isolation regions, first and second n-wells horizontally spaced apart from either of the plurality of device isolation regions, a p-channel transistor formed in a second n-well, an input protection transistor horizontally spaced apart from the first n-well and the device isolation regions, on a symmetrical portion by the first n-well to the second n-well, and a guard ring formed between the first n-well and the input transistor. The disclosure of Lee does not, however, teach or suggest the presence of any capacitor structure, let alone the claimed poly-poly capacitor structure wherein the upper plate electrode is comprised of SiGe polysilicon.

The §103 rejections also fail because there is no motivation in the applied references which suggests modifying the structures described therein to include applicants' claimed poly-poly capacitor in which the upper plate electrode is comprised of SiGe polysilicon. The rejections are thus improper since the prior art does not suggest this drastic modification. The law requires that a prior art reference provide some teaching, suggestion, or motivation to

make the modification obvious. In re Fritch, 972 F.2d, 1260,1266, 23 USPQ 1780,1783-84 (Fed. Cir. 1992).

Here, there is no motivation provided in the disclosures of the applied prior art references, or otherwise of record, which would lead one skilled in the art to make the modification mentioned hereinabove. "The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." In re Fritch, 972 F.2d, 1260,1266, 23 USPQ 1780,1783-84 (Fed. Cir. 1992).

There is no suggestion in the prior art of applicants' claimed poly-poly capacitor structure therefore all the claims of the present application are not obvious from Wu, et al., alone, as well as the combination of Wu, et al. and Lee.

Based on the above amendments and remarks, the §103 rejections citing Wu, et al., or Wu, et al. and Lee have been obviated; therefore reconsideration and withdrawal of the instant §103 rejections are respectfully requested.

Wherefore reconsideration and allowance of the claims of the present application are respectfully requested.

Respectfully submitted,



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**ATTACHMENT: VERSION WITH MARKINGS TO SHOW CHANGES MADE
IN THE SPECIFICATION:**

Please amend the paragraph on Page 6, lines 10-17 to read as follows:

The present invention which provides a method of fabricating a poly-poly capacitor using field effect transistor gate and bipolar SiGe extrinsic polysilicon layers will now be described in more detail by referring to the drawings that accompany[ing] the present application. It should be noted that in the [accompanying] drawings like and corresponding elements are referred to by like reference numerals.

IN THE CLAIMS:

Please cancel non-elected Claims 1-23, without prejudice or disclaimer, and please amend Claims 24, 25 and 26 to read as follows:

24. (Amended) A poly-poly capacitor comprising [two] upper and lower plate electrodes, wherein at least [one of the plate electrodes] the upper plate electrode is composed of SiGe polysilicon, said plate electrodes being separated by an insulator structure.

25. (Amended) The poly-poly capacitor of Claim 24 wherein [one of said plate electrodes] the lower plate electrode is composed of polysilicon [and the other plate electrode is composed of SiGe polysilicon].

26. (Amended) The poly-poly capacitor of Claim 24 wherein [both of the plate electrodes are] the lower plate electrode is composed of SiGe polysilicon.